

KENTUCKY TRANSPORTATION CABINET  
DEPARTMENT OF HIGHWAYS  
DIVISION OF CONSTRUCTION  
DBE Detailed Plan/SUBCONTRACT REQUEST

PROJECT CODE NO: 04-0001  
DBE Firm/Subcontract #: 2  
TO: Rick Stansel  
Executive Director Division of Contract Procurement  
FROM: Gohmann Asphalt and Construction Inc.  
Prime Contractor

SUBJECT: STPS 8751 (15) Jefferson County Project Number

I hereby request to utilize for DBE participation a portion of the subject project to:  
N.H. Stone Inc. of Sharpburg, KY 40374  
DBE Employer Identification Numbers: 61-0675026 KY 70049  
The amount to be subcontracted by this request is Federal DBE \$46,391.65 or 3.68% of the (original contract) or a subcontract amount of \$1,259,000.00

I have previously requested approval for subcontracts or agreements with other DBE as follows:

| Name of DBE firm | DBE Amount  | DBE % | Contract "Worth" Amount | Contract % |
|------------------|-------------|-------|-------------------------|------------|
| Pro-Mark Inc.    | \$16,990.13 | 1.35% | 16,990.13               | 1.35%      |
|                  | \$63,381.78 | 5.03% | \$63,381.78             | 5.03%      |

Totals based on original contract amounts

This section applicable if DBE firm is also a Subcontractor of work on Project:

This subcontractor has been furnished a copy of Appendix B of 49 CFR Part 29 and advised to include the Certification in all lower tier covered transactions and in all solicitations for lower tier transactions (Federal Aid Contracts only).

The proposed subcontractor is on the Department's list of qualified contractors and has current insurance coverage: Policy Number GL: CO979X7846 WC: 1041

GL: Travelers Prop Cas Ins Co. WC: AIK Comp which expires on January 1, 2005

Prime Contractor's Signature  
Date

Recommended by Office of Minority Affairs Signature

Date Recommended by Office of Minority Affairs

**KENTUCKY TRANSPORTATION CABINET**  
**DEPARTMENT OF HIGHWAYS**  
**DIVISION OF CONSTRUCTION**  
**DBE Detailed Plan/SUBCONTRACT REQUEST**

Pa.

Project Code Number (PCN): 04-0001 DBE Firm N.H. Stone Inc.

(\*) When description is limited by such as "Laying Only" "Erection Only" "Manipulation Only" etc. it should be so indicated and explained.

(\*\*) When the quantity is not the entire amount of (Contract) or (Sub-Contract) estimate, limitations by stations must be shown or definitely designated in some suitable, positive manner.

Unit prices using Contract Unit Price should be for Bid Unit Price for work to be performed by Sub Contractor. DBE Unit price should be for the agreed upon price for item or portion of item of contract work.

The Items to be subcontracted are as follows:

| Estimate Sub Section Seq. # | Proposal Item No. | Description                   | Unit  | Contract Quantity | Contract Unit Price | Dollar Amount based on Contract Price | DBE Quantity | DBE Unit Price | Dollar Amount based on DBE Price |
|-----------------------------|-------------------|-------------------------------|-------|-------------------|---------------------|---------------------------------------|--------------|----------------|----------------------------------|
| A015                        | 15                | Guardrail-Steel W Beam S Face | LinFt | 948.0000          | \$13.55             | \$12,845.40                           | 948.0000     | \$13.55 ✓      | \$12,845.40                      |
| A016                        | 16                | Guardrail End Treatment TY2A  | Each  | 1.0000            | \$590.00            | \$590.00                              | 1.0000       | \$590.00 ✓     | \$590.00                         |
| A017                        | 17                | Remove Guardrail              | LinFt | 425.0000          | \$1.60              | \$680.00                              | 425.0000     | \$1.60 ✓       | \$680.00                         |
| A018                        | 18                | Temporary Guardrail           | LinFt | 35.0000           | \$59.00             | \$2,065.00                            | 35.0000      | \$59.00 ✓      | \$2,065.00                       |
| A032                        | 32                | Crash Cushion Type VI-T       | Each  | 3.0000            | \$7,175.00          | \$21,525.00                           | 3.0000       | \$7,175.00 ✓   | \$21,525.00                      |
| A036                        | 36                | Erosion Control Blanket       | SQ YD | 2,568.0000        | \$1.25              | \$3,210.00                            | 2,568.0000   | \$1.25 ✓       | \$3,210.00                       |
| A037                        | 37                | Seeding & Protection          | SQ YD | 7,275.000000      | \$0.43              | \$3,128.25                            | 7,275.000000 | \$0.43 ✓       | \$3,128.25                       |
| A038                        | 38                | Sodding                       | SQ YD | 72.000000         | \$9.00              | \$648.00                              | 72.000000    | \$9.00 ✓       | \$648.00                         |
| A055                        | 55                | Modify Existing Sign          | Each  | 1.00              | \$1,700.00          | \$1,700.00                            | 1.00         | \$1,700.00 ✓   | \$1,700.00                       |

Comments:

Page Total \$46,391.65

\$46,391.65

## E X H I B I T ' A '

SUBCONTRACT NO: 10428-105

STONE INC  
S, HWY 11  
P O BOX 239  
SHARPSBURG, KY 40374

CONTRACT NO: FD52 056 0864 011-012  
COUNTY: JEFFERSON  
LOCATION: POPLAR LEVEL ROAD

All items shall conform to all specifications and drawings as covered in proposal and plans including all special notes, special provisions and Department of Transportation(Highways) Standard Specifications and Standard Drawings.

Quantities shown are approximate based on state pay quantities and/or our best estimate of required quantities. Actual quantities will be directed by Department of Transportation(Highways) engineer and/or ordered by project management.

| ITEM                  | DESCRIPTION                   | QUANTITIY     | UNIT PRICE  | TOTAL     |
|-----------------------|-------------------------------|---------------|-------------|-----------|
| 15                    | GUARDRAIL-STEEL W BEAM-S FACE | 948.00 LF @   | 13.55000    | 12,845.40 |
| 16                    | GUARDRAIL END TREATMENT TY 2A | 1.00 EA @     | 590.00000   | 590.00    |
| 17                    | REMOVE GUARDRAIL              | 425.00 LF @   | 1.60000     | 680.00    |
| 18                    | TEMPORARY GUARDRAIL           | 35.00 LF @    | 59.00000    | 2,065.00  |
| 32                    | CRASH CUSHION TYPE VI-T       | 3.00 EA @     | 7,175.00000 | 21,525.00 |
| 36                    | EROSION CONTROL BLANKET       | 2,568.00 SY @ | 1.25000     | 3,210.00  |
| 37                    | SEEDING AND PROTECTION        | 7,275.00 SY @ | 0.43000     | 3,128.25  |
| 38                    | SODDING                       | 72.00 SY @    | 9.00000     | 648.00    |
| 55                    | MODIFY EXISTING SIGN          | 1.00 EA @     | 1,700.00000 | 1,700.00  |
| TOTAL FOR SL CO# GI : |                               |               |             | 46,391.65 |

\*\*\*\*\*  
THIS CONTRACT IS SUBJECT TO THE ADDITIONAL TERMS AND SPECIAL PROVISIONS DESCRIBED IN THE ATTACHED DOCUMENT  
\*\*\*\*\*

PLEASE INITIAL NHS

**Kentucky Transportation Cabinet  
Department of Highways  
Division of Construction**

MOD 9/95

**SUBCONTRACTOR'S CERTIFICATION RECEIPT OF BID PROPOSAL**

I hereby certify that N.H. Stone Inc. of Sharpsburg, KY 40374 has  
Subcontracting Company City, State

a copy of the bid proposal in the Bid Letting 1/23/04 for 04-0001  
Letting Date Project Code No. (PCN)

Jefferson STPS 8751 (15)  
County Project Number

and will abide by the conditions set forth in said bid proposal.

N.H. Stone III, V.P. 03-11-04 N.H. Stone Inc.  
Representative Date Subcontracting Company

Hereby recognized as an official representative of this Company, with full authority to sign, I understand and am fully aware of the conditions set forth and herein by this statement.

**STANDARD FORM OF AGREEMENT  
BETWEEN CONTRACTOR AND SUBCONTRACTOR**

**THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION  
WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION  
OR MODIFICATION**

**AGREEMENT:**

made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year of \_\_\_\_\_

**BETWEEN the Contractor:**

Gohmann Asphalt and Construction, Inc.  
P. O. Box 2428  
Clarksville, IN 47131  
Phone (812) 282-1349  
Fax (812) 288-2168

**and the SUBCONTRACTOR:**

N H STONE INC  
P O BOX 239  
SHARPSBURG, KY 40374  
PHONE: 606-247-2311 FAX: 606-247-2153

The Contractor has made a contract for construction dated \_\_\_\_\_ with

**The OWNER:**

Transportation Cabinet  
Department of Highways  
Frankfort, KY 40622

**Proposal Dated:** January 23, 2004

**Contract No.:** FD04 047 031W 030-034

**Location:** Popular Level Road

**PCN:** 04-0001

which Contract is hereinafter referred to as the Prime Contract and which provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein has been made available to the Subcontractor.

The Contractor and the Subcontract agree as set forth below:

**TERMS AND CONDITIONS OF AGREEMENT  
BETWEEN CONTRACTOR AND SUBCONTRACTOR**

**ARTICLE 1  
THE SUBCONTRACT DOCUMENTS**

**1.1** The Subcontract Documents consist of (1) this Agreement: (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other contract Documents enumerated therein, including Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Agreement between the Owner and Contractor and Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Agreement, and other Contract Documents, if any, listed in the Owner-Contractor Agreement: (3) All Exhibits: (4) other documents listed in Article 16 of this Agreement: and (5) Modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in Article 16.

**1.2** The Subcontractor shall be furnished copies of the Subcontract Documents upon request, but the Contractor may charge the Subcontractor for the cost of reproduction.

**ARTICLE 2  
MUTUAL RIGHTS AND RESPONSIBILITIES**

**2.1** The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that provisions of the Prime Contract apply to the Work of the Subcontract, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the owner, under the Prime Contract, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under the Prime Contract, assumes toward the Owner. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor which the Owner, under the Prime Contract, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor which the Contractor, under the Prime Contract, has against the Owner, insofar as applicable this Subcontract. Where a provision of the Prime Contract is inconsistent with a provision of this Agreement, this Agreement shall govern.

**2.2** The Contractor may require the Subcontractor to enter into agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities which the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other which the Contractor and Subcontractor have by virtue of the provisions of the Agreement.

**ARTICLE 3  
CONTRACTOR**

**3.1 SERVICES PROVIDED BY THE CONTRACTOR**

**3.1.1** The Contractor shall cooperate to the extent possible with the Subcontractor in scheduling and performing the Contractor's Work to avoid conflicts or interference in the Subcontractor's Work and shall expedite written responses to submittals made by the Subcontractor in accordance with Paragraph 4.1 and Article 5. As soon as practicable after execution of this Agreement, the Contractor shall provide the Subcontractor copies of the Contractor's construction schedule, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. The Subcontractor shall be notified promptly of subsequent changes in the construction and submittal schedules and additional scheduling details.

**3.1.2** The Subcontractor understands and agrees that Contractor reserves the right to issue two party checks for materials purchased by Subcontractor for this project.

**3.1.3** Except as provided in Article 14, the Contractor's equipment, tools, facilities will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms. In all cases, Subcontractor will insure said equipment and indemnify Contractor per Section 4.6 of this Agreement while said equipment is under the control of, in possession of, and in use by the Subcontractor. This document will constitute a valid Lease Agreement between Contractor and Subcontractor.

**3.1.4** The contractor shall carryout all applicable requirements of 49 CFR26 in the award and administration of federally assisted highway construction projects. This contractor, the Cabinet, Subcontractors and Sub-Recipients shall not discriminate on the basis of race, color, national origin or sex in the performance of work performed pursuant to Cabinet contracts.

## **3.2 COMMUNICATIONS**

**3.2.1** The Contractor shall promptly make available to the Subcontractor information which affects this Subcontract and which becomes available to the Contractor subsequent to execution of this Subcontract.

**3.2.2** The Contractor shall not give instructions or orders directly to employees or workmen of the Subcontractor, except to persons designated as authorized representatives of the Subcontractor.

**3.2.3** If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Contractor, a subcontractor or anyone directly or indirectly employed by them (other than the Subcontractor), the Contractor shall, prior to harmful exposure of the Subcontractor's employees to such substance, give written notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

## **3.3 CLAIMS BY THE CONTRACTOR**

**3.3.1** Liquidated damages for delay, if provided for in Paragraph 9.2 of this Agreement, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor, the Subcontractor's employees, agents, Sub-subcontractors, suppliers or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract.

## **3.4 CONTRACTOR'S REMEDIES**

**3.4.1** If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within three working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, without

prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the cost thereof from the payments then or thereafter due the Subcontractor.

#### **ARTICLE 4**

#### **SUBCONTRACTOR**

##### **4.1 EXECUTION AND PROGRESS OF THE WORK**

**4.1.1** The Subcontractor shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the Work of the Contractor, other Subcontractors or Owner's own forces.

**4.1.2** The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other Subcontractors.

**4.1.3** The Subcontractor agrees to perform said items of Work in accordance with their accepted bid and maintain same to final acceptance subject to all requirements of the plans, standard specifications, special provisions and proposal documents and all requirements incorporated by reference as exist between Owner and Contractor, all of which have been examined and are understood by Subcontractor, and are hereby made part of this Subcontract by reference.

**4.1.4** The Subcontractor shall take necessary precautions to protect properly the Work of the Contractor, Owner and other Subcontractors from damage caused by operations under this Subcontract. The Subcontractor shall cooperate with the Contractor, other Subcontractors and the Owner's own forces whose Work might interfere with the Subcontractor's Work. The Subcontractor shall advise the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other Subcontractors or the Owner's own forces.

##### **4.2 LAWS, PERMITS, FEES AND NOTICES**

**4.2.1** The Subcontractor shall give notices and comply with laws, ordinances, rules, regulations and orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

**4.2.2** The Subcontractor shall comply with federal, state and local tax laws, social security acts, unemployment compensation acts and workers' or workmen's compensation acts insofar as applicable to the performance of this Subcontract.

##### **4.3 SAFETY PRECAUTIONS AND PROCEDURES**

**4.3.1** The Subcontractor shall take all reasonable safety precautions with respect to performance of this Subcontract, shall comply with all safety measures initiated by the Contractor and with all applicable laws, ordinances, rules, regulations and orders of public authorities for the safety of persons or property in accordance with the requirements of the Prime Contract. The Subcontractor shall report to the Contractor within forty-eight hours an injury to an employee or agent of the Subcontractor, which occurred at the



site. Failure by Subcontractor to comply with this provision is grounds for termination of this Subcontract.

**4.3.2** If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other Subcontractors and other employers on the site.

**4.3.3 Subcontractors shall require all on site supervisors and foremen to have completed the U.S. Department of Labor Occupation Safety and Health Administration's 10 hour Occupational Safety and Health Training Course in Construction Safety and Health. Proof of completion shall be submitted with these Subcontract Documents.**

**4.3.4** The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for unclean conditions caused by other Contractors or Subcontractors.

#### **4.4 DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM**

**4.4.1** All DBE subcontractors must comply with the regulations found in 49 CFR Part 26, and the definitions and requirements contained therein shall be adopted as if set out verbatim herein.

**4.4.2** All DBE subcontractors must provide the Division of Construction, a copy of all checks received from the Prime Contractor within seven (7) days of receipt of final payment for work performed on Cabinet projects.

#### **4.5 WARRANTY**

**4.5.1** The Subcontractor warrants to the Owner, and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless otherwise required or permitted by the Subcontract Documents, that the Work of this Subcontract will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Subcontract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Subcontractor, improper or insufficient maintenance, improper operations, or normal wear and tear under normal usage. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Subcontractor documents.

#### **4.6 INDEMNIFICATION**

**4.6.1** To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting there from, but only to the extent caused in whole or in part by negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be

liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 4.6.

**4.6.2** In claims against any person or entity indemnified under this Paragraph 4.6 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 4.6 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' or workmen's compensation acts, disability benefits acts of other employee benefit acts.

#### **4.7 PAYMENT**

**4.7.1** Contractor will pay Subcontractor within seven (7) working days of receipt of moneys paid by Owner on progress estimates (except final payment). Payments to Subcontractor shall be made subject to inspection and acceptance by the Owner and in accordance with quantities allowed by Owner and in accordance with values specified in Exhibit "A" to this Agreement less 1.50 percent of the subcontractors contract amount or the amount of said subcontractor demobilization quote which ever is greater to be held until such time as Owner, Contractor and Subcontractor have agreed upon final quantities for Subcontractor's work and until final payment is made to Contractor.

**4.7.2** Before issuance of the final payment; the subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied.

#### **4.8 EQUAL EMPLOYMENT OPPORTUNITY**

**4.8.1** Subcontractor shall comply with all conditions of the Contract Documents with respect to non-discrimination with Contractor's Affirmative Action Program and with the Civil Rights Act of 1964, Title VI, as implemented by the Regulations of the Department of Commerce, Title 15, Code of Federal Regulations, Part 8, and Executive Order No. 11246 of September 24, 1965 as amended (attached).

#### **4.9 DRUG FREE WORKPLACE**

**4.9.1** The Subcontractor agrees to comply with the Drug-Free Workplace Act of 1988 (final rule published May 25, 1990).

### **ARTICLE 5** **CHANGES IN THE WORK**

**5.1** The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of such a Modification issued subsequent to the execution of the Subcontract Agreement, the Contractor shall promptly notify the Subcontractor of the Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work, which would be inconsistent with the changes made by the Modifications to the Prime Contract.

**5.2** The Subcontractor may be ordered in writing by the Contractor without invalidating this Subcontract to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions, including those required by Modifications to the Prime Contract

issued subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract Time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents.

**5.3.** The Subcontractor shall make claims promptly to the Contractor for additional cost, extensions of time and damages for delays or other causes in accordance with the Subcontract documents. A claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor not less than two working days preceding the time by which the Contractor's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

## **ARTICLE 6**

### **UNION SHOP AND WAGES**

**6.1** Contractor maintains state-wide union shop contracts with Laborers, Operators, Carpenters, and Teamsters, which obligates the signatory Contractors to bind their Subcontractors. Subcontractor shall comply with all Labor Agreements, written or oral, that Contractor has entered into may enter into, or be bound by and hereby honors this commitment and is bound thereby.

**6.2** Subcontractor shall pay wage rates no less than those specified in the contract documents and Subcontractor shall submit project payroll transcripts and other reports required by Owner on a timely basis. Subcontractor acknowledges that non-submittal of required reports on the required schedule may result in withholding of Subcontractor payments.

## **ARTICLE 7**

### **ARBITRATION**

**7.1** Any controversy or claim between the Contractor and the Subcontractor arising out of or related to this Subcontract, or the breach thereof, shall be settled by arbitration, which shall be conducted in the same manner and under the same procedure as provided in the Prime Contract with respect to claims between the Owner and the Contractor. If the Prime Contract does not provide for arbitration or fails to specify the manner and procedure for arbitration, it shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree.

**7.2** Except by written consent of the person or entity sought to be joined, no arbitration arising out of or relating to the Subcontract shall include, by consolidation or joinder or in any other manner, any person or entity not a part to the Agreement under which such arbitration arises, unless it is shown at the time the demand for arbitration is filed that (1) such person or entity is substantially involved in a common question of fact or law, (2) the presence of such person or entity is required if complete relief is to be accorded in the arbitration, (3) the interest or responsibility of such person or entity in the matter is not insubstantial, and (4) this agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

**7.3** The Contractor shall give the Subcontractor prompt written notice of any demand received or made by the Contractor for arbitration if the dispute involves or relates to the Work, materials, equipment rights or responsibilities of the Subcontractor. The Contractor shall consent to inclusion of the Subcontractor in the arbitration proceeding whether by joinder, consolidation or otherwise, if the Subcontractor requests in writing to be included within ten days after receipt of the Contractor's notice.

**7.4** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

**7.5** This Article 7 shall not be deemed a limitation of rights or remedies which the Subcontractor may have under Federal law, under state mechanics' lien laws, or under applicable labor or material payment bonds unless such rights or remedies are expressly waived by the Subcontractor.

## **ARTICLE 8**

### **TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT**

#### **8.1 TERMINATION BY THE SUBCONTRACTOR**

**8.1.1** The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts not in dispute due under this Subcontract for 90 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, Sub-subcontractors or their agents or employees or other persons performing portions Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery.

#### **8.2 TERMINATION BY THE CONTRACTOR**

**8.2.1** If the Subcontractor persistently or repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Agreement and fails within three days after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, after three days following receipt by the Subcontractor or an additional written notice and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient, with the cost thereof to Subcontractor, who shall be liable for payment of same, including overhead, profit and attorney's fees.

#### **8.3 ASSIGNMENT OF THE SUBCONTRACT**

**8.3.1** In the event of termination of the Prime Contract by the Owner, the Contractor may assign this Subcontract to the Owner, with the Owner's agreement, subject to the provisions of the Prime Contract and to the prior rights of the surety, if any obligated under bonds relating to the Prime Contract. If the Work of the Prime Contract has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted.

**8.3.2** The Subcontractor shall not assign the Work of this Subcontract without the written consent of the Contractor, nor subcontract the whole of this Subcontract without the written consent of the

Contractor, nor further subcontract portions of this Subcontract without written notification to the Contractor when such notification is requested by the Contractor.

## **ARTICLE 9**

### **THE WORK OF THIS SUBCONTRACT**

**9.1** The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others.

**See Exhibit "A"**

### **9.2 PENALTIES**

**9.2.1** Subcontractors will be held to a strict schedule. Failure by a Subcontractor to complete their Work according to schedule, for any reason, which results in assessment of a Penalty by the Owner or his agent, will result in said Penalty being the sole responsibility of said Subcontractor.

## **ARTICLE 10**

### **DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

**10.1** Subcontractors will be held to a strict schedule submitted to and approved by Prime Contactor prior to the commencement of any work.

**10.2** Unless the date of commencement is established by a notice to proceed issued by the Contractor, or the Contractor has commenced visible Work at the site under the Prime Contract, the Subcontractor shall notify the Contractor in writing not less than five days before commencing the Subcontractor's Work to permit the timely filing of mortgages, mechanic's liens and other security interest.

**10.3** Time is of the essence of this Subcontract.

**10.4** No extension of time will be valid without the Contractor's written consent after claim made by the Subcontractor in accordance with Paragraph 5.2.

## **ARTICLE 11**

### **SUBCONTRACT SUM**

**11.1** The Contractor shall pay the Subcontractor in current funds for performance of the Subcontract the Subcontract Sum in accordance with Exhibit "A".

**11.2** The Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Owner and the Contractor:  
(Insert the numbers or other identification of accepted alternates).

**11.3** Unit price, if any, are as follows: (See Exhibit "A")

**ARTICLE 12**  
**FINAL PAYMENT**

**12.1** Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Contract Documents, the Architect has issued a Certificate for Payment covering the Subcontractor's completed Work and the Contractor has received payment from the Owner. If, for any cause, which is not the fault of the Subcontractor, a Certificate for Payment is not issued or the Contractor does not receive timely payment or does not pay the Subcontractor within seven working days after receipt of payment from the Owner, final payment to the Subcontractor shall be made upon demand.

**ARTICLE 13**  
**INSURANCE AND BONDS**

**13.1** The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability:

**CURRENT CERTIFICATE OF INSURANCE MUST BE ON FILE IN OUR OFFICE BEFORE COMMENCING WORK.  
(GOHMANN MUST BE LISTED AS AN ADDITIONAL INSURED ON YOUR CERTIFICATE OF INSURANCE).**

**13.2** Subcontractor shall obtain and maintain Worker's Compensation and Employer's Liability Insurance complying in all respects with all applicable statutes, rules, and regulations. Subcontractor shall also obtain and maintain third-party Public Liability and Property Damage Insurance, including general, products, and automobile liability coverage, sufficient to protect it from claims for damages including claims for personal injury and death and damages for injury to, or loss, destruction or loss of use of, property, that may arise from operations under this Subcontract, whether its own or those of its subcontractors or of anyone directly or indirectly employed by any of them. Following are the required limits: General Liability (\$1,000,000.00), Auto Liability (\$1,000,000.00 CSL) and Worker's Compensation (Statutory).

**13.3** Subcontractor shall obtain and furnish to Contractor at Subcontractor's expense a performance and payment bond satisfactory to Contractor guaranteeing the faithful performance of this Agreement in the sum or sums equal to one hundred percent (100%) of the subcontract price.

**13.4** Waivers of Subrogation. The Contractor and Subcontractor waive all rights against (1) each other and any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's Consultants, separate Contractors, and any of their Subcontractors, Sub-subcontractors, agents and employees for damages caused by fire or other perils to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as fiduciary. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**ARTICLE 14**  
**TEMPORARY FACILITIES AND WORKING CONDITIONS**

**14.1** The Contractor shall furnish and make available to the Subcontractor the following temporary facilities, equipment and services subject to the provisions of Section 3.1.3; these shall be furnished at no cost to the Subcontractor unless otherwise indicated below:

**14.2** Specific working conditions:  
(Insert any applicable arrangements concerning working conditions and labor matters for the Project).

**ARTICLE 15**  
**MISCELLANEOUS PROVISIONS**

**15.1** Where reference is made in this Agreement to a provision of the General Conditions or another Subcontract Document, the reference refers to that provision as amended or supplemental by other provisions of the Subcontract Documents.

**ARTICLE 16**  
**ENUMERATION OF SUBCONTRACT DOCUMENTS**

**16.1** The Subcontract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

**16.1.1** This executed Standard Form of Agreement Between Contractor and Subcontractor.

**16.1.2** The Prime Contract, consisting of the Agreement between the Owner and Contractor dated as first entered above and the other Contract Documents enumerated in the Owner-Contractor Agreement; Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda and other documents enumerated therein;

**16.1.3** The following Modifications to the Prime Contract, if any, issued subsequent to the execution of the Owner-Contractor Agreement but prior to the execution of this Agreement:

| <b>Modification</b> | <b>Date</b> |
|---------------------|-------------|
|---------------------|-------------|

**16.1.4** The Subcontract General Conditions.

**16.1.5** Other Documents, if any, forming part of the Subcontract Documents are as follows:

Exhibits "A" thru "D"

This Agreement entered into as of the day and year first written above.

CONTRACTOR:

Gohmann Asphalt and Construction Inc.

David F. Hardin  
(Signature)

DAVID F. HARDIN, P.E. VICE PRESIDENT/  
(Printed name and title) CHIEF ENGINEER

SUBCONTRACTOR:

N.H. Stone III  
(Signature)

N.H. Stone, III, Vice-President  
(Printed name and title)

Federal Tax ID No. 61-0675026

Kentucky Tax ID No. 070049

Sworn to and subscribed before me on

this 16<sup>th</sup> day of March 20 04

Witness my hand and OFFICIAL SEAL

Notary Public Brenda H. Jones  
State of Indiana

My commission expires 10/2/2010

Sworn to and subscribed before me on

this 11th day of March 20 04

Witness my hand and OFFICIAL SEAL

Notary Public Robert C. Clemens  
State of Kentucky

My commission expires 09-22-07



3/4/2004

E X H I B I T ' A '

SUBCONTRACT NO: 10428-105

N H STONE INC  
853 S, HWY 11  
P O BOX 239  
SHARPSBURG, KY 40374

CONTRACT NO: FD52 056 0864 011-012  
COUNTY: JEFFERSON  
LOCATION: POPLAR LEVEL ROAD

All items shall conform to all specifications and drawings as covered in proposal and plans including all special notes, special provisions and Department of Transportation(Highways) Standard Specifications and Standard Drawings.

Quantities shown are approximate based on state pay quantities and/or our best estimate of required quantities. Actual quantities will be directed by Department of Transportation(Highways) engineer and/or ordered by project management.

| ITEM                  | DESCRIPTION                   | QUANTITIY     | UNIT PRICE  | TOTAL     |
|-----------------------|-------------------------------|---------------|-------------|-----------|
| 15                    | GUARDRAIL-STEEL W BEAM-S FACE | 948.00 LF @   | 13.55000    | 12,845.40 |
| 16                    | GUARDRAIL END TREATMENT TY 2A | 1.00 EA @     | 590.00000   | 590.00    |
| 17                    | REMOVE GUARDRAIL              | 425.00 LF @   | 1.60000     | 680.00    |
| 18                    | TEMPORARY GUARDRAIL           | 35.00 LF @    | 59.00000    | 2,065.00  |
| 32                    | CRASH CUSHION TYPE VI-T       | 3.00 EA @     | 7,175.00000 | 21,525.00 |
| 36                    | EROSION CONTROL BLANKET       | 2,568.00 SY @ | 1.25000     | 3,210.00  |
| 37                    | SEEDING AND PROTECTION        | 7,275.00 SY @ | 0.43000     | 3,128.25  |
| 38                    | SODDING                       | 72.00 SY @    | 9.00000     | 648.00    |
| 55                    | MODIFY EXISTING SIGN          | 1.00 EA @     | 1,700.00000 | 1,700.00  |
| TOTAL FOR SL CO# GI : |                               |               |             | 46,391.65 |

\*\*\*\*\*  
THIS CONTRACT IS SUBJECT TO THE ADDITIONAL TERMS AND SPECIAL PROVISIONS DESCRIBED IN THE ATTACHED DOCUMENT  
\*\*\*\*\*

PLEASE INITIAL NHS

S P E C I A L   P R O V I S I O N S

10428-105  
N H STONE INC  
853 S, HWY 11  
P O BOX 239  
SHARPSBURG, KY 40374

1. All work will be scheduled by Gohmann Asphalt's project superintendent.
2. Subcontractor's quote to be incorporated as part of this subcontract agreement.

EST. 1950



Exhibit "C"

**Gohmann Asphalt and Construction Inc.**

P.O. Box 2428  
Clarksville, IN 47131-2428  
Phone (812) 282-1349  
FAX (812) 288-2168  
www.gohmannasphalt.com

## MEMO

TO: Subcontractors of Gohmann Asphalt & Construction Inc

FROM: Diane M Green  
Safety/Human Resources Director

DATE: January 1, 2001

RE: Safety Compliance on Projects

\*\*\*\*\*

Gohmann Asphalt & Construction Inc is committed to providing a safe project site. As a subcontractor on our project, we are requiring your complete cooperation in complying with all safety laws (OSHA etc) and with Gohmann's Safety Policies as stated in your Subcontract Agreement. Our Safety Department frequently inspects project sites for compliance and has the authority to suspend work until pertinent safety measures are utilized.

Attached is a copy of Gohmann's Safety Policies. Please review these policies and ensure your crews have been provided, and that they utilize, the mandatory personal protective equipment (i.e., hard hats, vests, safety boots, safety glasses, etc.).

It is also your responsibility to provide other safety equipment, such as fall protection devices, that may be necessary for your operations. Gohmann Asphalt & Construction Inc accepts no liability for failure of you to supply this equipment and for failure of your employees to use safety equipment.

I would appreciate your aggressive efforts in complying with your Subcontract Agreement regarding safety. If you have any questions, please do not hesitate to call me at (812)282-1349

Thanks!

DMG:sas

Attachment





## SAFETY POLICIES

1. Employee must attend a Safety Orientation Session and attend Daily Safety Toolbox Meetings on the project.
2. Work boots with safety toes, long pants and shirts with a minimum of six inch sleeves are required to be worn at all times on the job. No tank tops, sleeveless shirts, shorts or cutoffs may be worn by any employee.
3. Approved safety glasses shall be worn when there is any potential of flying debris. This includes when employees are drilling, sawing, cutting, jack hammering, etc.
4. Face shields must be worn when using equipment that will produce flying debris.
5. Cutting goggles; welding helmets, and other special eye protection shall be worn as needed for welding operations.
6. The appropriate protective gloves shall be worn during hot work, welding, cutting, handling chemicals, working with wet concrete, etc.
7. Hearing protection shall be used when working around loud noises, operating heavy equipment and other hazardous noise producing tasks greater than 85 dBA.
8. Approved hardhats shall be worn correctly at all times on the job. Hardhats may not be worn backwards.
9. The use of seatbelts on equipment with rollover protection and on all vehicles is mandatory at all times.
10. The use of personal protective equipment by all employees on the jobsite is mandatory.
11. No employee shall cross a 4-lane highway or interstate on foot. No employee shall cross a 55mph road on foot.
12. If the employee is not sure how to perform a task safely, they are to consult with the Supervisor before attempting the task.
13. Employees shall report all injuries and accidents to the Supervisor immediately no matter how slight the injury may seem.
14. The employee is to remain in the designated work area as directed by the Supervisor.
15. Employees will avoid damage to property or equipment and injury to the public.
16. Defective or broken hand tools, equipment, power tools, electrical cords and equipment, etc., may not be used. The employee preparing to use the item must make a pre-use inspection ensuring the item is not defective or broken. Any deficiencies are to be reported by the employee to the Supervisor immediately. The item shall be tagged out-of-service and not used until repaired or replaced.
17. Operators of equipment must inspect their equipment at the start of each workday and report any deficiencies to the Supervisor immediately. Operators must be competent and alert to ground workers at all times.
18. Drivers of vehicles must inspect their vehicle at the start of each workday and complete an inspection log. Deficiencies should be reported to the Supervisor immediately. Drivers must be competent, have a valid license, and obey all traffic laws.
19. Employees are to perform only those tasks that they have been trained for and are qualified to perform.
20. Any employee working in or around vehicular or equipment traffic must wear an approved orange safety vest at all times.
21. Personal portable or non-portable telephones may not be used during working hours or while on the jobsite. Jobsite telephones are available for use only in case of an emergency.
22. No personal radios, walkmans, tape/cd players, portable electronic games, or portable televisions of any kind may be used during working hours or while on the jobsite.
23. Employees must wear proper fall protection equipment when exposed to heights of 6' or more.
24. Employees may not smoke or have an open flame in any area designated as "No Smoking or Open Flame." This includes refueling areas, tool trailers, gang box areas, offices, office trailers, etc.

25. Employees who are issued a mobile phone are strongly encouraged not to talk on the phone and drive at the same time. Whenever possible, drivers should pull over and stop before talking on the mobile phone.
26. It is the policy of the Company for employees to lift heavy objects with mechanical means. Only if this is not feasible possible may employees (with appropriate help) lift heavy objects.
27. Employees are to be knowledgeable of the emergency plan, emergency telephone numbers and locations of telephones or other communication devices to be used in an emergency.
28. Employees are to be knowledgeable of the location of fire extinguishers, first-aid kits, first-aid providers, and other emergency information.
29. Employees must be knowledgeable in the use of fire extinguishers.
30. All employees are responsible for housekeeping on the jobsite.
31. Safety suggestions or concerns are encouraged and can be directed to the Supervisor or the Safety Department. If possible, suggestions and concerns will be considered confidential if requested by the employee. No employee will be retaliated against for reporting a safety concern.
32. Possession or use of a firearm, or any weapon, on jobsites or any company property is forbidden. Threatening or harassing other employees or the public for any reason will result in immediate disciplinary action, including termination of employment.
33. Possession or consumption of intoxicating drugs and/or alcoholic beverages on the jobsite or any company property, or in any vehicle parked on Company property, is forbidden, as is reporting to work under the influence of any such substance. Compliance with the Company's Drug-Free Workplace Policy is mandatory.
34. Employees are to be knowledgeable of the Hazard Communication Program, use of Material Safety data Sheets, safe use of chemicals that are to be used, and the location of the HAZCOM manual on the jobsite.
35. Employees are responsible for working safely, using provided equipment, avoiding injuries or property damage, following all local, state, federal and Company safety policies and regulations, and reporting unsafe conditions to the Supervisor.

### ENFORCEMENT OF SAFETY POLICIES

Depending upon the severity of the violation, a Supervisor, Manager, or Safety Department official may enforce the Safety Policies by immediate disciplinary action, up to and including discharge. Routine disciplinary actions for safety violations are as follows:

1. First Violation: Verbal Warning, recorded in personnel file.
2. Second Violation: Written Warning, recorded in personnel file.
3. Third Violation: Suspension.
4. Fourth Violation: Discharge.

Management may skip any level of discipline as deemed necessary. Some types of violations may warrant immediate discharge.

SUBCONTRACTOR'S SIGNATURE:

*N.H. Stowe III*

DATE:

March 11, 2004

## GOHMANN ASPHALT &amp; CONSTRUCTION, INC.

## SUBCONTRACTOR SAFETY DATA SHEET

SUBCONTRACTOR: N.H. Stone, Inc.  
 STREET ADDRESS: 853 South Highway 11  
 Sharpburg, KY 40374  
 CONTACT NAME: Fred Clark  
 PHONE: (606) 247-2311  
 FAX: (606) 247-2153

Gohmann Asphalt and Construction, Inc. is committed to working with safe subcontractors. Towards that end, we have established criteria by which we select subcontractors who have demonstrated good safety performance. Before your company may qualify for work as a subcontractor, your safety performance will be evaluated against this criteria.

Please furnish the following information and requested back-up documentation for your firm:

## WORKERS' COMPENSATION INSURANCE EXPERIENCE MODIFICATION RATING (for the past three years)

| MONTH / YEAR      | EMR  |
|-------------------|------|
| 01/01/01-01/01/02 | 1.22 |
| 01/01/02-01/01/03 | 0.96 |
| 01/01/03-01/01/04 | 0.98 |

Please furnish back-up for this information. Acceptable back-up documentation would include a letter from your insurance carrier on their letterhead, your experience rating calculation sheets, or your policy showing the modification rate and coverage period. If you are self-insured against workers' compensation claims, please furnish details from your policy administrator.

If your EMR is above 1.0 for any given coverage period, please furnish a letter from your insurance carrier explaining the reason.

## TOTAL RECORDABLE INJURY FREQUENCY RATE (for the past three years)

Calculate:

Total Injuries x 200,000

Work Hours

| CALENDAR YEAR | EXPOSURE HOURS WORKED | RECORDABLE RATE |
|---------------|-----------------------|-----------------|
| 2001          | 127,973               | 26.57           |
| 2002          | 119,387               | 31.83           |
| 2003          | 122,748               | 35.85           |

Please furnish copies of the right side of your OSHA 200 logs for the three calendar years listed above.

Number of OSHA citations in past 3 years: NONE (Please list citations on a separate sheet of paper.)

Do your jobsite Supervisor and Foreman have OSHA Construction 10-Hour Training? Yes ☒ No ☐

Please submit copies of training cards. Gohmann Asphalt & Construction, Inc. requires all subcontractors on-site Supervisors and Foremen to be OSHA Construction 10-Hour trained.

Does your on-site supervision conduct regular toolbox safety meetings? Yes ☒ No ☐

Data submitted by:

Signature and Title  
 N.H. Stone III Vice-President

Date:

March 11, 2004

SUBMIT THIS SHEET WITH YOUR SIGNED SUBCONTRACT.

## GENERAL CONDITIONS

### APPLICABLE TO SUBCONTRACTOR AND SUBCONTRACTOR'S WORK

Subcontractor shall be bound to Contractor by the terms of the Subcontract Documents and, to the extent that the Contract Documents apply to Subcontractor's Work, Subcontractor shall assume toward Contractor all of the obligations and responsibilities that Contractor assumes toward Owner under the Contract Documents; provided, however, that where any provision of the Contract Documents is inconsistent with any provision of the Subcontract Documents, the latter shall govern.

Subcontractor shall furnish all labor, materials, and equipment used in, or in connection with, the full performance of all of Subcontractor's Work and acknowledges that Contractor's equipment will not be available to Subcontractor except in Contractor's discretion and on mutually satisfactory terms.

Subcontractor shall pay for all labor, materials, and equipment used in, or in connection with, the performance of Subcontractor's work, when and as bills or claims therefore become due, and furnish satisfactory evidence to Contractor, including statements, affidavits, and certificates with reference to labor or materials furnished by or on the order of Subcontractor, that all payrolls, expenses, and costs of every type and nature whatsoever connected with the performance of Subcontractor's Work have been paid.

Subcontractor shall perform and coordinate Subcontractor's Work with that of Contractor and other subcontractors to the best interests of the Project as a whole, as determined by Contractor, and shall have no claim for extra compensation on account of delays, interference or hindrance caused by Contractor or other subcontractors in the performance of their respective portions of the Project.

Subcontractor acknowledges that all of Subcontractor's Work shall be done subject to the final approval of Owner or Owner's Representative whose decision in matters, including matters relating to artistic effect, shall be final, if consistent with the terms of the Contract Documents.

Subcontractor shall properly and adequately protect all work and material against loss, damage, or deterioration during construction and shall take every precaution against damage to work in progress and other property belonging to Owner, Contractor or to third parties located in, under, upon, or about the Project site.

Subcontractor shall take all necessary precautions during the execution of Subcontractor's Work so as to not trespass upon or cause damage, disturbance, obstruction of access, removal or disturbance of support to land, buildings or other structures or property or people outside of the right of way for the Project site or within the right of way of the Project site, except as required by the Contract Documents.

Subcontractor shall keep the Project site clear at all times from debris arising out of Subcontractor's Work and shall remove trash and debris generated by Subcontractor's work from the site and dispose of debris in a manner acceptable to Contractor and Owner.

Subcontractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority applicable to Subcontractor's Work and shall secure and pay for all permits, fees, licenses, and inspections necessary for the proper execution and completion of Subcontractor's Work.

Subcontractor shall comply with, be responsible for and pay all amounts due under Federal, State and local tax laws, social security acts, and unemployment compensation acts Worker's compensation laws/statutes/regulations, all labor laws, and all other laws, statutes, regulations, etc. applicable to performance of this Agreement.

Subcontractor shall not assign this Agreement nor subcontract the whole of Subcontractor's Work, without Contractor's prior written consent; nor shall Subcontractor subcontract any portion of Subcontractor's Work or assign any amounts due or to become due under this Agreement without prior written consent of Contractor.

Subcontractor shall promptly furnish periodic progress reports, if and when requested by Contractor, concerning the status of all aspects of Subcontractor's Work.



Subcontractor warrants to Contractor, for its benefit and the benefit of Owner, that all materials and equipment furnished shall be new unless otherwise specified, and that all of Subcontractor's Work shall be of good quality, free from faults and defects and in conformity with the Contract Documents. Subcontractor further guarantees Subcontractor's Work to the extent and for the time required by the Contract Documents but in no event for less than one year from final acceptance. All Subcontractor's Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The warranties in this section are in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

Subcontractor acknowledges that, without invalidating or otherwise affecting this Agreement or the bonds furnished by Subcontractor, Subcontractor may be notified in writing by Contractor to make changes in the scope of the Subcontractor's Work consisting of additions, deletions, or other revisions, the Subcontract Price and Subcontractor's Schedule where affected being changed accordingly. Prior to commencing such changed or revised work, Subcontractor shall submit to Contractor in writing any claim for changes in the Subcontract Price and Subcontractor's Schedule for such work in a manner consistent with the Contract Documents.

Subcontractor shall indemnify and hold harmless Owner and Contractor and their respective agents and employees from and against all costs, losses, expenses, claims and damages, including attorneys' fees arising out of or resulting from the performance or nonperformance of Subcontractor's Work or breach of any of Subcontractor's agreements in and obligations under this Agreement and including without limitation costs, losses, expenses, claims and damages attributable to:

- [a] bodily injury, sickness, disease, or death to persons, whether or not employed by or under Subcontractor;
- [b] injury to or destruction of property, including loss of the use thereof, whether or not owned, leased, or used by Subcontractor;

- [c] failure to pay for labor, materials, and equipment, including amounts that may be expended by Contractor to discharge any lien or claim thereof;
- [d] failure to obtain and maintain insurance and bonds required by this Agreement;
- [e] defects in Subcontractor's Work;
- [f] failure to conform to Subcontractor's Schedule; and
- [g] violations of any law, ordinance, rule, regulation, or order of and public authority applicable to Subcontractor's Work.

Subcontractor's duty to indemnify shall apply to matters caused in whole or in part by Subcontractor and persons directly or indirectly employed by Subcontractor or for whom Subcontractor is responsible, regardless of whether caused in part by a person indemnified hereunder and shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Subcontractor by any laws, ordinances, rules, regulations, or orders of public authority otherwise applicable.

Pending final disposition of any dispute arising under or in any way relating to this Subcontract, Subcontractor shall proceed diligently with the performance of Subcontractor's Work and shall do whatever is necessary to avoid interference with the Project or withholding by Owner of any payments to Contractor.

If Subcontractor shall neglect to prosecute Subcontractor's Work diligently and properly or fail to perform any provision of this Agreement, Contractor, after three (3) calendar days from the certified mail receipt of written notice to Subcontractor, may without prejudice to any other remedy Contractor may have, including its remedy under last paragraph, and without terminating this Subcontract, take such actions and expend such sums as may be necessary to correct any such matter and may deduct the cost thereof from payments then or thereafter due Subcontractor.

If Subcontractor fails or neglects to carry out Subcontractor's Work in accordance with Contract Documents or otherwise fails to perform in accordance with this Agreement and fails within seven (7) days after written notice to commence and continue correction of such failure or neglect, Contractor may, after seven (7) days following receipt by Subcontractor of a further written notice and without prejudice to any other remedy Contractor may have, terminate this Agreement and finish Subcontractor's Work by whatever method Contractor may deem expedient. If the unpaid balance of the Subcontract Price exceeds the cost of finishing Subcontractor's Work, such excess shall be paid to Subcontractor. If such cost exceeds the unpaid balance of the Subcontract Price, Subcontractor shall pay the difference to Contractor.

STANDARD FEDERAL EQUAL EMPLOYMENT  
OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS  
(EXECUTIVE ORDER 11246)

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted.
- b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority.
- c. "Employer Identification Number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- d. "Minority" includes:
  - 1. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
  - 2. Hispanic (all persons of Mexican, Puerto Rican, Cuban or Central or South American or other Spanish Culture of origin, regardless of race;
  - 3. Asian and Pacific Islander (all persons having origins in any of the original peoples

of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands) and;

4. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set fourth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area

(including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in the compliance with provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and time tables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraph 7 a through p of these specifications. The goals set fourth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they

do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications. Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have a commitment to employ the apprentices and trainees at the Completion of their training, subject to the availability of employment opportunities. Trainees

must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligations to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- B. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and

female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of other organizations' responses.

- C. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- D. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

- E. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- F. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement by publicizing it in the company newspaper, annual report etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- G. Review, at least annually, the company's EEO policy and affirmative action obligations

under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.

- H. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female new media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- I. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area

and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- J. Encourage present minority and female employees to recruit other minority persons and women and where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
- K. Validate all tests and other selections requirements where there is an obligation to do so under 41 CFR Part 60-3.
- L. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- M. Ensure that seniority practices, job classifications, work assignments and other

personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

- N. Ensure that all facilities and company activities are nonsegregated except the at separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - O. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - P. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor--union, contractor--community, or



other similar group of which the contractor is a member and participant may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially desperate manner (for example,

even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and or the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246 as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4-8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g. mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this

requirement, Contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application or other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

B. The notice set forth in 41 CFR 60-4.2 and the specifications set forth in 41 CFR 60-4.3 replace the New Form for Federal Equal Employment Opportunity Bid Conditions for Federal and Federally Assisted Construction published at 41 FR 32482 and commonly known as the Model Federal EEO Bid Conditions, and the New Form shall not be used after the regulations in 41 CFR Part 60-4 become effective.